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U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

2005 DEC -5 PM 1:08

LORETTA G. WHYTE
DOCKET NO. 1657

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

DEC - 2 2005

FILED
CLERK'S OFFICE

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE VIOXX PRODUCTS LIABILITY LITIGATION

BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D. LOWELL JENSEN, J. FREDERICK MOTZ,* ROBERT L. MILLER, JR., KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL

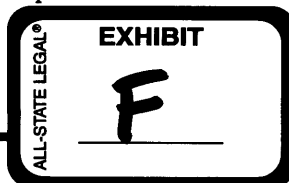
TRANSFER ORDER

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by a health care defendant in the Southern District of Texas action and plaintiffs in the remaining actions listed on Schedule A to vacate the Panel's orders conditionally transferring the actions to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Merck & Co., Inc., favors inclusion of these actions in MDL-1657 proceedings.

On the basis of the papers filed and hearing session held, the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Any pending motions to remand to state court can be presented to and decided by the transferee judge. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims of liability for allegedly adverse effects arising from the ingestion of Vioxx. See *In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

The opposing Tennessee plaintiff and the Texas health care defendant argue that the presence of individual and/or local questions of fact as well as differing legal theories should militate against inclusion of these actions in MDL-1657 proceedings. We are unpersuaded by these arguments. Inclusion of these actions in Section 1407 proceedings has the salutary effect of placing all the related actions before a single judge who can formulate a pretrial program that: 1) prevents repetition of previously considered matters; 2) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues, *In re Multi-Piece Rim Products*

* Judge Motz took no part in the decision of this matter.



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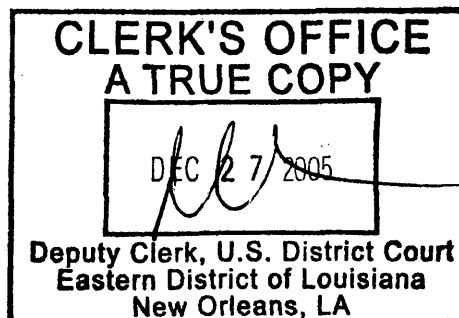
Liability Litigation, 464 F.Supp. 969, 974 (J.P.M.L. 1979); and 3) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. *See In re StarLink Corn Products Liability Litigation* (J.P.M.L. 2001). It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. Should the transferee judge deem remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See Rule 7.6, R.P.J.P.M.L.*, 199 F.R.D. at 436-38.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



Wm. Terrell Hodges
Chairman



SCHEDULE A**MDL-1657 -- In re Vioxx Products Liability Litigation**

EDLA

Sect. L/3

Southern District of Alabama*Marquerite Woods v. Merck & Co., Inc., et al.*, C.A. No. 2:05-425

05-6339

Middle District of Florida*Barbara Fowler-Browning, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-586

05-6340

Northern District of Illinois*James Zafiratos v. Merck & Co., Inc., et al.*, C.A. No. 1:05-3784

05-6341

Southern District of Illinois*Stanley Hayes v. Merck & Co., Inc., et al.*, C.A. No. 3:05-450

05-6342

Clara Kirkendall v. Merck & Co., Inc., et al., C.A. No. 3:05-562

05-6343

Mary Hardin v. Merck & Co., Inc., et al., C.A. No. 3:05-563

05-6344

Western District of Kentucky*Lois Hammond, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-351

05-6345

Eastern District of Missouri*Harriet Aldridge, et al. v. Merck & Co., Inc., et al.*, C.A. No. 4:05-847

05-6346

Mona Swint, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-879

05-6347

Sam Fife, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-880

05-6348

Vanita Copeland, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-881

05-6349

District of Nevada*Duane Allen Carlson, et al. v. Merck & Co., Inc., et al.*, C.A. No. 2:05-599

05-6350

Nina Baker, et al. v. Merck & Co., Inc., et al., C.A. No. 2:05-625

05-6351

Daniel Morrison, et al. v. Merck & Co., Inc., et al., C.A. No. 2:05-627

05-6352

Sharon Himmel, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-334

05-6353

Sean Regan, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-336

05-6354

Western District of New York*Lynn Krieger v. Merck & Co., Inc., et al.*, C.A. No. 6:05-6338

05-6355

District of Oregon*Wayne S. Harger v. Merck & Co., Inc., et al.*, C.A. No. 6:05-6184

05-6356

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Eastern District of Tennessee

EDLA
Sect. 1/3

Louise Denton v. Merck & Co., Inc., C.A. No. 2:05-170

05-6357

Southern District of Texas

Jackie Roberts, etc. v. Juan Marcos Garcia, M.D., et al., C.A. No. 1:05-210

05-6358